IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION Nos.21158 and 22175 of 1998

WRIT PETITION No.21158 of 1998

Between:

Hindusthan Aeronautics Limited,

Rep. by Chief Administrative Manager

(Personnel & Administration)
Hyderabad Division, Balanagar,
Hyderabad

..... PETITIONER

AND

1 The Additional Industrial Tribunal-cum-Labour Court
Chandravihar Building Mozamzahi Market,
Hyderabad
2 P. Bala Gangadhar Rao S/o Veerabhadram
R/o H.No.4-131, Durganagar Colony,
Dilsukhnagar, Hyderabad-60

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a writ particularly one in the nature of Writ of Certiorari, calling for the records in the Industrial Tribunal, Hyderabad and parts awarded in I.D.No.99 of 1995 and pass such further or other orders as the Hon'ble Court may deem fit.

Counsel for the Petitioner: Mr. K.SRINIVASA MURTHY

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Mr. A.K. JAYAPRAKASH RAO

WRIT PETITION No. 22175 of 1998

Between:

P. Balagangadhara Rao, S/o Veerabhadra Rao,
R/o Hyderabad

..... PETITIONER

AND

1 The Additional Industrial Tribunal cum Addl.Labour Court,

Rep by its Presiding Officer,
Chandravihar Buildings, 1st Floor,

M.J.Road, Hyderabad
2 Hindustan Aeronautics Ltd., Rep by its Chief Administrative

Manager (Personnel & Admn.), Hyderabad Division,
Balanagar, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction, particularly one in the nature of writ of certiorari, and quash the award passed by the 1st respondent in I.D.No.99/95 dt.12-11-97, published on 19-1-98, in so far as denying the petitioner reinstatement with back wages and continuity of service as illegal, unjust, contrary to law and perverse and grant all consequential benefits.

Counsel for the Petitioner: Mr. A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1: GP for Labour

Counsel for the Respondent No.2 : Mr. K.SRINIVASA MURTHY

The Court made the following :

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ORAL COMMON ORDER:

Writ Petition No.21158 of 1998 is filed by the Management, while Writ Petition No.22175 of 1998 is filed by the workman being aggrieved by the Award dated 12-11-1997 in I.D.No.99 of 1995 on the file of the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad.

The only question that falls for consideration in these Writ Petitions is whether the Labour Court can take up the issue of validity of the domestic enquiry, which aspect was already dealt with by the National Tribunal while examining the application filed by the Management under Section 33(2)(b) of the Industrial Disputes Act,1947 (for brevity 'the Act') again ?

I have heard the learned counsel for the parties and gone through the entire material on record including the Order dated 21-7-1997 and the impugned Award of the Labour Court.

The Labour Court while dealing with the validity of the domestic enquiry held that since the said question has already been examined by the National Tribunal while granting permission under Section 33(2)(b) of the Act, the same cannot be gone into by it and as such, held that no such question can be raised again and it amounts to *res judicata.* I am afraid that such a proposition was taken up on its own by the Labour Court and answered the issue. Firstly, the question of *res judicata* is not recognized by the labour jurisprudence unless and until it is shown that it is a vexatious litigation to scuttle any attempt at raising industrial disputes repeatedly in defiance of operative settlements and awards, but this highly technical concept of civil justice may be kept in precise confined limits in the field of industrial arbitration, which must as far as possible be kept free from such technicalities, which thwart resolution of industrial disputes (*s e e* ***WORKMEN v. HINDUSTAN LEVER LIMITED***). The learned counsel for the petitioner in Writ Petition No.22175 of 1998 also placed before this Court the Order dated 13-5-1991 in Approval Application No.31 of 1989 on the file of the National Tribunal at Bombay, wherein the application of the Management under Section 33(2)(b) of the Act was considered and approval was granted. But, in the entire order of approval, there is not even a whisper that the domestic enquiry conducted by the management was valid and

justified. As a routine course of examining the aspect as to granting of approval under Section 33(2)(b) of the Act, the Labour Court made several observations, but none of those observations would justify to say that the National Tribunal has examined the aspect as to the validity of the domestic enquiry itself.

The finding of the Labour Court dated 21-7-1997 upholding the domestic enquiry conducted by the Management and the dismissal of the petition filed by the workman in I.A.No.257 of 1997 seeking to review the order passed on the validity of the domestic enquiry, will not have any bearing in deciding the issue in this *lis,* since the workman is entitled to question the validity of the domestic enquiry along with the Award passed in the I.D.

It is well settled that the jurisdiction of the Industrial Court under Section 33(2)(b) of the Act is only to examine the findings of the Enquiry Officer in order to find out whether any *prima facie* case is made out or whether the findings of the Enquiry Officer are perverse and the validity of the removal order would still be liable to be decided in a reference under Section 2-A or Section 10 of the Act at the instance of the workman.

A similar issue cropped for consideration before a Division Bench of the Orissa High Court in **MANAGEMENT OF ORISSA R.T.C. LTD. v. M.V.RAO & ANOTHER** wherein it was observed as under:

> "**3.** Mr. Murthy appearing for the employer in O.J.C.No.2938 of 1998 argues with vehemence that in view of the order of approval of the Tribunal under Section 33(2)(b) of the Industrial Disputes Act, which was confirmed by this Court in O.J.C.No.1445 of 1979, the Tribunal was incompetent to enter into an enquiry into the said matter in a reference under Section 10 and, therefore, the award of the Tribunal must be held to be without jurisdiction. This question has been recently considered by us at length in a writ application filed by the self-same employer in O.J.C.No.3375 of 2000. *The Management of Orissa Road Transport Company Limited v. The Workman T. Bangali Patra & another,* disposed of on September 16,1991. After noticing a catena of decisions of different High Courts as well as of the Supreme Court and analyzing the power of Tribunal under Section 33(2)(b) of the Industrial Disputes Act as well as such power of the Tribunal under Section 10 of the said Act, it was held that an order of approval under Section 33(2)(b) could not be a bar to such a reference and when the reference is made, the same had to be decided on its own merits in accordance with law….. "

In another case in **CHOLAN ROADWAYS CORPORATION LIMITED v. INDUSTRIAL TRIBUNAL, MADRAS & ANOTHER** the Madras High Court observed as under:

> "**10.** ……..The Tribunal exercising jurisdiction under Section 33(2)

(b) of the Industrial Disputes Act is not sitting as a Court of Appeal weighing or reappraising evidence. For the purpose of granting or refusing approval under Section 33(2)(b) of the Act, the Tribunal only examines the findings of the Enquiry Officer in order to find out whether there is a *prima facie* case or whether the findings of the Enquiry Officer are perverse. A *prima facie* case is not a case proved to the hilt. If the employer has held a proper enquiry into the alleged misconduct of the employee following the principles of natural justice and if it does not appear that the proposed dismissal of the employee amounts to victimization or an unfair labour practice, the other ground on which the Tribunal can interfere is only when there is no legal evidence at all recorded in the domestic enquiry. In other words, if there was a proper enquiry into the misconduct and no victimization or unfair labour practice is involved, the Tribunal has to limit its enquiry under Sec.33(2)(b) only to the extent as to whether a *prima facie* case has been made out or not. It must be remembered that the jurisdiction is only to decide whether the ban imposed on the employer by Section 33 is to be lifted or maintained by granting or refusing the approval. If the approval is refused by the Tribunal, the employer would be precluded from discharging or punishing the workman. However, if permission or approval is granted, that could not validate the action of discharge or dismissal. **Permission or approval would merely remove the ban, but the validity of the order would still be liable to be decided in a reference at the instance of the workman under Section 10 or 2-A of the Act.**" (emphasis supplied)

In yet another decision in **M/s.ECHIJAY INDIA (P) LTD. v. SHRI M. SHIVUBHA & OTHERS** a Division Bench of Gujarat High Court held that an enquiry under Section 33(2)(b) of the Act is confined only to the question as to whether a *prima facie* case has been made and permission granted under Section 33(2)(b) would not bar the examination of the question of validity of the order of dismissal under Section 10 of the Act.

From the above case law, what can be deduced is that the Order passed by the Industrial Court under Section 33(2)(b) of the Act granting approval of the termination/dismissal order cannot bar the workman from invoking the provision under Section 2-A(2) or Section 10 of the Act and the Industrial Court is not debarred from examining the validity of the Order of termination/dismissal in the application under Section 2-A(20 or Section 10 of the Act. The claim petition under Section 2-A(2) of the Act has to be dealt with independently without being influenced by any observations made in any other ancillary proceedings. The order passed under Section 33(2)(b) of the Act cannot operate as *res judicata* while deciding the petition under Section 2-A(2) or Section 10 of the Act including the issue as to validity of the domestic enquiry.

Under the above circumstances, this Court is of the opinion that the Labour Court erred in holding that the approval granted by the National Tribunal while exercising the jurisdiction under Section 33(2)(b) of the Act has any way debarred the consideration of the validity of the domestic enquiry by the regular Tribunal before whom the removal order was challenged, while examining the claim petition under Section 2-A(2) of the Act. On this ground alone, the impugned Award passed of the Labour Court is liable to be set aside and accordingly set aside and the matter is remitted back for reconsideration of the entire matter including the validity of the domestic enquiry as a preliminary issue. The Labour Court is directed to dispose of the matter as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

In the result, Writ Petition No.22175 of 1998 filed by the workman is allowed. The matter is remitted to the Labour Court for consideration afresh, as stated above. In view of this, there is no necessity of passing any orders in Writ Petition No.21158 of 1998 filed by the Management and it is accordingly closed. The Management is at liberty to participate in the proceedings before the Labour Court and raise all questions as permissible under law. No order as to costs.

16-6-2005

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the Thursday, Sixteenth day of June Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Presiding Officer, Additional Industrial Tribunal-cum-Labour Court
Chandra vihar Building, Mozamzahi Market,

Hyderabad

2 The Chief Administrative Manager (Personnel & Admn.),

Hindustan Aeronautics Ltd., Hyderabad Division,
Balanagar, Hyderabad

3 2 CCs to Govt.Pleader for Labour, High Court Buildings, Hyderabad (OUT)

4 2 CD copies.

LR COPIES TO BE TYPED